

Presentation to the Virginia Soil and Water Conservation Board by David C. Dowling, Policy, Planning and Budget Director, Department of Conservation and Recreation.

September 20, 2007 Board Meeting at the Virginia State Library

General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) Action

Introductory comments

For both of the regulatory actions you will discuss today and tomorrow, I want to assure you that DCR has worked very hard to develop the best possible products for the Board's consideration. We have tried to be inclusive of ideas generated not only by the TAC members but also those individuals watching the process that have provided us with their thoughts.

That does not mean that every comment has been included but I promise you it was discussed. This also does not mean that the regulations are perfect. We know that there may be elements that may be improved. We have tried to balance impacts on the regulated community and the public in general with the significant water quality issues that require our immediate attention. I believe that we have truly walked that fine line very closely.

I also know that some of the concerns that remain are based on misunderstandings of process and how all of the regulatory actions will inter-relate in the end. Again, we realize some of these issues and will work to provide further explanation and education in areas where it is needed.

However, some concerns may be valid, and for those we pledge to continue to work with our partners to make further improvements to these regulations as we work to finalize them over the coming year.

The regulations that we present to you the next two days include a number of technical issues. Where you have questions, please do not hesitate to ask us for additional clarification. We have a number of technical experts with us both today and tomorrow to assist in explaining these issues.

Before we get started with my explanation of the MS4 regulation, we thought we would have Doug Fritz our MS4 Program Manager provide you with additional background on this regulatory issue.

[Doug's presentation is available from the Department's regulatory website.]

A summary of the actions taken relative to this regulatory process are as follows:

Actions to Date

- Board Motion: September 28th, 2006
- Filed NOIRA: February 13th, 2007
- The 30-day public comment period opened on March 5th and closed on April 4th.
- We mailed out approximately 340 notices of the NOIRA and the regulatory Town Hall sent notices to 738 individuals.

- We received 8 comments and 16 requests to be placed on the TAC. A summary of the comments received was provided to each Board member.
- Finalized TAC composition May 29, 2007; The MS4 TAC was composed of 26 members including local governments (12); environmental groups (3); state agencies (5 - representing 4 agencies); federal agencies (3 members - representing 2 agencies); colleges and universities (2); planning district commission (1).
- The TAC was facilitated by DR. Frank Dukes at the Institute for Environmental Negotiation.

Committee Meetings

- The 1st meeting of the TAC: June 19, 2007
- The 2nd meeting of the TAC: July 26, 2007
- The 3rd meeting of the TAC: August 22, 2007
- Approximately 12 internal discussions and drafting meetings throughout the process.

Process (Modified Administrative Process Act Procedures)

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

9. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, **(c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1,** and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) **provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01,** (ii) **following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit,** (iii) **provides notice and receives oral and written comment as provided in § 2.2-4007.03,** and (iv) **conducts at least one public hearing on the proposed general permit.**

[Note: some will refer to this as an expedited process. However, that is not to say that it does not allow for due diligence and public comment. Public comment opportunities are the same as they are for any other APA process. It is the Administrative review that has been eliminated from the process.]

Timeline

- Upon Board adoption of the proposed regulations, should you take that action today; File on Sept. 26th with the Registrar's Office; Published on October 15th in the Virginia Register of Regulations
- A 60-day public comment period will begin on October 15th (Ends December 14th)
(EPA will also review during this time period)
(We also have newspaper publishing requirements (federal) during this time period)
- Public hearings will most likely be held in early December (Roanoke and Richmond) – Daytime meetings – probably 1:30 p.m.
- We would then hopefully bring the Final regulation to the Board at the January 18th (tentative) meeting. We would expect to have the amended General Permit regulation in place sometime in March with an effective date of July 1, 2008.

TAC Member Evaluation

[Note: We felt we had a very engaged TAC that was very knowledgeable in this issue and that provided us with substantial guidance.]

**University of Virginia: Institute for Environmental Negotiation
Evaluation by Members of the MS4 Technical Advisory Committee
Aug. 22, 2007 Meeting**

+ (what we liked)

- Flexibility of process
- Good representation of interests
- Thorough nature of examination and discussion
- DCR listened
- DCR was responsive to members, incorporating suggestions or explaining why not
- Quality of participants
- The process led to learning and improving the program and assisting members in implementing their own programs
- IEN facilitator kept the group on track
- There was a resolution (wording for a proposed regulation)

Δ (what we would change)

- The facility was challenging (utilized the Science Museum which has acoustics problems)
- The EPA representative should have been here throughout
- It would have been helpful to have material for review earlier
- This could be combined with workshops held around Virginia to explain elements of the permit

[Note: We felt that the TAC was generally supportive of the direction we were heading.]

EPA Preliminary Feedback on the Draft Proposed Regulation

EPA contacted the Department last Friday (Sept 14th) and indicated that they did not see any problems with the draft proposed regulation. However, this was not a complete legal review and they may offer additional comments during the formal comment period.

Attorney General's Office

I have reviewed the above-referenced amendments to Part XV of the VSMP Permit Regulations. Based upon your agency's representations, it is my opinion that the Soil and Water Conservation Board has authority to promulgate the regulations under applicable law, including Chapter 6 of Title 10.1 of the *Code of Virginia*. Based upon your agency's representations, it is also my view that under Va. Code § 2.2-4006.A.9, the amendments are excluded from Article 2 of the Virginia Administrative Process Act.

[Note: Again, remember that the regulation we are about to review is part of a federally mandated program under the Clean Water Act.]

Regulation Summary

Overview:

This regulatory action, that amends the general permit for small Municipal Separate Storm Sewer Systems, is necessary as the existing general permit is good for 5 years and is set to expire on December 9, 2007. If operators submit a registration statement by December 7th, their existing coverage will be administratively continued until July 1, 2008 when coverage under this permit would commence for another 5-year period. These amendments serve to further advance water quality protections to the maximum extent practicable, advance water quality improvements where a wasteload allocation from a TMDL has been assigned to an MS4, provide greater clarity to localities as how to administer and improve/ advance their MS4 programs, and specify sampling protocols where applicable and necessary reporting requirements.

[Note: As requested by the Board at the last meeting, we have attempted to build a summary for the regulatory amendments. I will review the summary with the Board first and then at the Board's direction, will review the sections in a more detailed fashion if you wish. I also want to bring to your attention that a few additional changes were made between the draft you were mailed and the one in your packets today (September 19, 2007 version). All were non-substantive and most reflected sentence structure, misspellings, inconsistency in terminologies used, etc. that were caught by the AG's Office and us.]

The key changes to this permit include:

- 1) Updating and adding needed definitions such as "maximum extent practicable", "TMDL", "wasteload allocation" and "MS4 program plan" (lines 6 - 762); PART I [section 10] and PART XV [section 1200].
- 2) Updating exemptions and special situations associated with the general permit coverage such as de minimus discharges (such as carwashes), discharges resulting from spills beyond the operator's control, and portions of an MS4 covered under an industrial stormwater discharge VPDES permit (lines 825 - 890); PART XV [section 1220].
- 3) Updating registration statement requirements such as submittal deadlines and filing information (type of facility, HUC codes that receive discharges, acreage of drainage area discharging to impaired waters, and listing any wasteload allocations to the MS4) including specifying the elements of a MS4 Program Plan (proposed BMPs to be implemented, their associated goals, and an implementation schedule that is established by the MS4) (lines 892 - 988); PART XV [section 1230].

- 4) Specifying special procedures within the general permit that a small regulated MS4 shall employ if a wasteload allocation (WLA) as part of a TMDL has been assigned to the MS4 prior to the effective date of the permit (unless reopened) including:
 - a. MS4 Program Plan updates within 18 months of permit coverage to include measurable goals, strategies and implementation schedules to address the WLA;
 - b. Review of ordinances, policies, plans, procedures and contracts that are applicable to reducing the pollutant;
 - c. Outfall reconnaissance procedures for outfalls discharging to the surface water to which the WLA has been assigned;
 - d. For operator owned or operated property, pollutant identification and sampling procedures; and
 - e. An estimated annual characterization of the volume of stormwater discharged and the quantity of the pollutant identified in the WLA discharged (lines 990 – 1139); PART XV [section 1240, SECTION I].
- 5) Specifying that a Municipal Separate Storm Sewer System Management Program shall reduce pollutants from the MS4 to the maximum extent practicable, improve impaired waters that the MS4 discharges into, protect water quality, and address WLAs; as well as, establish a schedule for MS4 Program Plan Review and submittal and the public notice procedures for the plan (lines 1141 – 1177); PART XV [section 1240, SECTION II A]
- 6) Clarifying and expanding minimum criteria within the general permit associated with the six minimum control practices which are (PART XV [section 1240, SECTION II B]):
 - a. Public education and outreach (lines 1178 – 1206);
 - Requires the operator to increase individual and household knowledge of steps to reduce stormwater pollution; increase public employee, business and general public knowledge of the hazards associated with illegal discharges and improper disposal of waste; increase local involvement in water quality improvement initiatives; increase strategies to reach diverse, disadvantaged, and minority audiences as well as special concerns related to children, and target strategies towards local groups of commercial, industrial, and institutional entities likely to have stormwater impacts.
 - b. Public involvement/ participation (lines 1207 – 1222);
 - Requires the operator to promote the availability of the MS4 Program Plan, provide public access to the annual report, and to participate in local activities aimed at increasing public participation in the reduction of stormwater pollutant loads and in improving water quality.
 - c. Illicit discharge detection and elimination (lines 1223 – 1286);
 - Requires the operator to develop, implement and enforce an illicit discharge and elimination program, maintain a storm sewer system map, effectively prohibit nonstormwater discharges into the storm sewer system, develop procedures to detect and address nonstormwater discharges, and prevent to the maximum extent practicable the discharge of hazardous substances or oil in the stormwater discharges.
 - d. Construction site stormwater runoff control (lines 1287 – 1342);
 - Requires program consistency with the Erosion and Sediment Control Law and attendant regulations.
 - e. Post-construction stormwater management in new development and redevelopment (lines 1343 – 1402); and

- Requires program consistency with the Virginia Stormwater Management Act and attendant regulations.
- f. Pollution prevention/ good housekeeping for municipal operations (lines 1403 – 1432).
- Requires municipal operations to reduce pollutant discharges, eliminate illicit discharges, dispose of waste materials properly, protect soluble or erodible materials from precipitation, apply fertilizers and pesticides appropriately, and for state agencies to develop and implement nutrient management plans.
- 7) Establishing a program self evaluation requirement once every 5 years in accordance with EPA guidance (lines 1466 – 1478); PART XV [section 1240, SECTION II E].
- 8) Clarifying minimum reporting requirements such as submittal of MS4 Program Plan updates, WLA pollutant reduction estimates, number of illicit discharges identified and how they were eliminated, information regarding new stormwater management facilities brought on line, and a list of agreements with third parties for the implementation of control measures, as well as establishing a time schedule for reporting (by October 1st of each year for the previous July 1 – June 30) (lines 1479 – 1510); PART XV [section 1240, SECTION II E].
- 9) Refining the basic EPA boiler plate language that applies to all VSMP permits (lines 1522 – 1894); PART XV [section 1240, SECTION III].
- 10) Updating the incorporated General Permit Registration Statement form to track the amended regulation (lines 1896- 1907); FORMS.

[Note: Madame Chairman, that concludes my summary and I turn it back to you for further explanation of the proposed regulations at the Board's request or for public comment.]

Regulation Amendment Specifics

Global changes:

- Throughout the regulation changed “permittee” and “owner” to “operator” to reflect the operator of an MS4 facility.
- Where appropriate changed references to MS4 to read “regulated small MS4” throughout the regulation.

Part I – Definitions

4VAC50-60-10. Definitions.

- Created a definition for Hydrologic unit code to reflect a watershed unit upon which reporting is based (lines 144 - 145).
- Added an EPA definition for “Indirect discharger” which means a nondomestic discharger introducing “pollutants” to a “publicly owned treatment works (POTW)” (lines 164 - 165).
- Deleted the term "Individual control strategy" which is not utilized in the regulations (lines 166 - 169).
- For both "Large municipal separate storm sewer system" and for "Medium municipal separate storm sewer system" clarified that the MS4 designations were based on the 1990 decennial census by the Bureau of Census and not the “latest” (lines 197 and 264).
- Incorporated a definition for “Maximum extent practicable” or “MEP” and establishes it as an iterative standard, which evolves over time as urban runoff management knowledge increases. Specifies that the operator’s MS4 program must continually be assessed and modified to incorporate improved programs, control measures, best management practices (BMPs), etc. to maintain compliance with water quality standards (lines 251 - 260).
- Modified the definition of "Municipal Separate Storm Sewer System Management Program" to specify that a management program will, in addition to reducing the discharge of pollutants to the maximum extent practicable, also protect water quality, and satisfy the appropriate water quality requirements of the CWA and regulations and the Virginia Stormwater Management Act and attendant regulations (lines 313 - 321).
- Updated the definition of person to match the Code definition and then to clarify that a governmental body may include a federal entity (lines 402- 407).
- As total maximum daily loads and associated wasteload allocations are key elements of the general permit, definitions for both have been included (lines 672 – 676 and lines 717 - 719).
- Incorporated a definition for "Water quality standards" that are narrative statements and numeric limits that describe water quality necessary to meet and maintain reasonable and beneficial uses such as swimming and, other water based recreation, public water supply and the propagation and growth of aquatic life (lines 720 - 725).

Part XV – MS4 General Permit

4VAC50-60-1200. Definitions.

- Eliminated the definitions for “Infiltration” and “Inflow” that are not utilized in the permit (lines 747 - 756).
- Established a definition for “Date brought on line” which means the date when the operator determines that a new stormwater management facility is properly functioning to meet its designed pollutant load reduction (lines 744 - 746).

- Established a definition for “MS4 Program Plan” which means the completed registration statement and all approved additions, changes and modifications detailing the comprehensive program implemented by the operator under this permit to reduce the pollutants in the stormwater discharged from its municipal separate storm sewer system (MS4) that has been submitted and accepted by the director (lines 757- 761).
- Established a definition for “Physically interconnected” which means that a MS4 directly discharges to a second MS4 (line 762).

4VAC50-60-1210. Purpose; delegation of authority; effective date of the permit.

- Clarified that this general permit will become effective on July 1, 2008, and will expire five years from the effective date (lines 822 - 823).

4VAC50-60-1220. Authorization to discharge.

- Specified additionally that nonstormwater discharges or flows into the regulated small MS4 are authorized by this permit and do not need to be addressed in the MS4 Program if:
 - The individual nonstormwater discharges or flows have been identified in writing by the Department of Environmental Quality as de minimis discharges that are not significant sources of pollutants to state waters and do not require a VPDES permit (lines 841 - 844).
 - The discharge of materials resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage (lines 857 - 858).
 - The operator is instructed to take, or ensure that the responsible party takes, all reasonable steps to minimize or prevent any adverse effect on human health or the environment (lines 855 - 856).
 - The section further specified that in the event the operator is unable to meet certain conditions of this permit due to circumstances beyond the operator’s control, a written explanation of the circumstances that prevented permit compliance shall be submitted to the department in the annual report and specifies what some of those circumstances are and are not (lines 862 - 873).
- Specified that for those portions of a regulated small MS4 that are covered under a VPDES permit for industrial stormwater discharges, the operator shall follow the conditions established under the VPDES permit as long as such permit remains current (lines 876 - 881).
- Specified that stormwater discharges from specific MS4 outfalls that have been granted conditional exclusion for “no exposure” of industrial activities and materials to stormwater under the VPDES permitting program shall obtain coverage under this VSMP general permit (lines 882 - 887).
- Specified that receipt of this VSMP general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation (lines 888 - 890).

4VAC50-60-1230. Permit application (registration statement).

- Established that in order to continue uninterrupted coverage under the VSMP general permit, operators of regulated small MS4s shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board (lines 904 - 909).
- Specified that the registration statement shall additionally include:
 - Type of MS4 (lines 914 – 917);

- The Hydrologic Unit Code(s) currently receiving discharges or that have potential to receive discharges from the regulated small MS4 (lines 918 – 922);
- The estimated drainage area, in acres, served by the regulated small MS4 discharging to any impaired receiving surface waters, and a description of the land use for each such drainage area (lines 923 - 928);
- A listing of any TMDL waste loads allocated to the regulated small MS4 (lines 929 - 933);
- The name(s) of any regulated physically interconnected MS4s to which the regulated small MS4 discharges (lines 934 - 936);
- A copy of the MS4 Program Plan than includes:
 - A list of best management practices (BMPs) that the operator proposes to implement for each of the six stormwater minimum control measures and their associated measurable goals (lines 938 - 946);
 - The objective and expected results of each best management practice (BMP) in meeting the measurable goals of the six stormwater minimum control measures (lines 947 - 949);
 - The implementation schedule including any interim milestones for the implementation of a proposed new best management practice (BMP) (lines 950 - 951); and
 - The method that will be utilized to determine the effectiveness of each best management practice (BMP) and the MS4 Program as a whole (lines 952 - 953).
- A list of all existing signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures (lines 954 - 957);
- The name, address, telephone number and e-mail address of either the principal executive officer or ranking elected official (lines 958 - 960); and
- The name, position title, address, telephone number and e-mail address of any duly authorized representative (lines 961 - 962).

4VAC50-60-1240. General permit.

- Specified that the Effective Date of the General Permit is July 1, 2008 and the Expiration Date is June 30, 2013 (lines 998 - 999).
- Under SECTION I special conditions, specified that a pollutant identified in a wasteload allocation as part of a Total Maximum Daily Load approved by the State Water Control Board **as of the effective date of this permit** must be addressed through the measurable goals of the MS4 Program Plan (lines 1046 - 1053). **[MODIFIED IN ACCORDANCE WITH AG DIRECTION/ DISCUSSION.]**
 - Specified that the operator shall update its MS4 Program Plan to include measurable goals, schedules, and strategies to ensure MS4 Program consistency with the TMDL within 18-months of permit coverage; or, within 18-months of the effective date of any reopening of this permit to include wasteloads allocated to the regulated small MS4 after issuance of permit coverage (lines 1054 - 1058).
 - Specified that the measurable goals, schedules, strategies, and other best management practices (BMPs), required in an updated MS4 Program Plan to assure MS4 Program consistency with an approved TMDL for the pollutant identified in a WLA are, at a minimum (lines 1059 - 1062):
 - The operator shall develop a list of its current ordinances and legal authorities, policies, plans, procedures and contracts implemented as part of the MS4 Program

that are applicable to reducing the pollutant identified in a WLA (lines 1063 - 1066).

- The operator shall evaluate existing ordinances and legal authorities, policies, plans, procedures and contracts of the existing MS4 Program to determine the effectiveness of the MS4 Program to address reduction of the pollutant identified in the WLA. The evaluation shall identify any weakness or limitation in the MS4 Program to reduce the pollutant identified in the WLA in a manner consistent with the TMDL (lines 1067 - 1072).
- The operator shall develop [and implement] a schedule to implement procedures and strategies to address the MS4 Program weaknesses including a timetable to update the existing ordinances and legal authorities, policies, plans, procedures and contracts to ensure consistency with the TMDL. When possible, source elimination shall be prioritized over load reduction (lines 1073 – 1077 and 1078).
- Specified that the operator shall integrate an awareness campaign into its existing public education and outreach program that promotes methods to eliminate and reduce discharges of the pollutant identified in the WLA (lines 1079 - 1083).
- Specified that the operator is encouraged to participate as a stakeholder in the development of any Implementation Plans developed to address the TMDL and shall incorporate applicable best management practices (BMPs) identified in the TMDL implementation plan in their MS4 Program Plan (lines 1084 - 1087).
- Specified that the operator shall develop and implement outfall reconnaissance procedures to identify and eliminate the discharge of the pollutant identified in the WLA (lines 1088 - 1097)
 - The operator shall annually conduct reconnaissance on a minimum of 15% of its known MS4 outfalls discharging to the surface water for which the WLA has been assigned.
 - Reconnaissance shall be performed on all outfalls at least once during this permit period.
- Specified that the operator shall evaluate all properties owned or operated by the MS4 operator for potential sources of the pollutant identified in the WLA. Within three years of updating the MS4 Program Plan, the operator shall conduct a site evaluation and characterize the runoff for those properties where it determines that the pollutant identified in the WLA is currently stored, or has been transferred, transported or historically disposed of in a manner that would expose it to precipitation (lines 1098 - 1104).
 - The operator shall collect a total of two samples from a representative outfall for each identified municipal property during each of the following six-month periods: October through March, and April through September (lines 1105 - 1107).
 - All collected samples shall be grab samples and collected within the first thirty minutes of a runoff producing event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previous measurable (greater than 0.1 inch rainfall) storm event (lines 1108 - 1120).
 - For properties where there is found to be a discharge of the pollutant identified in the WLA, the operator shall develop and implement a schedule to minimize the discharge of the pollutant identified in the WLA in a manner consistent with the approved TMDL (lines 1121 - 1124).
- Specified that the operator shall conduct an annual characterization that estimates the volume of stormwater discharged, in gallons, and the quantity of pollutant identified in the

WLA, in a unit consistent with the WLA, discharged by the regulated small MS4 (lines 1125 - 1128).

- As part of the annual evaluation, specified that the operator shall update the MS4 Program Plan to include any new information regarding the TMDL in order to ensure consistency with the TMDL (lines 1129 - 1131).
 - Additionally we deleted and moved into the main body of the permit the language associated with releases of hazardous substances or oil in excess of reportable quantities (lines 1029-1045).
- Under SECTION II A, specified that in addition to reducing the discharge of pollutants from the regulated small MS4 to the maximum extent practicable (MEP), protecting water quality, and addressing WLA's, the program shall improve impaired waters defined in the 2006 305(b)/303(d) Water Quality Assessment Integrated Report that the MS4 discharges into (lines 1141 - 1164).
 - Stipulated that within 180 days of the effective date of this general permit, the operator shall review its existing MS4 Program Plan and submit a schedule to develop and implement programs to meet the conditions established by this permit (lines 1165 - 1170).
 - Stipulated that prior to submittal of the MS4 Program Plan and proposed schedule to the department, each operator must provide public notification and provide for receipt of public comments. Public notice shall allow at least 30 days for public comment (lines 1171 - 1177).
 - Under SECTION II B, Minimum control measures, the following changes were made to better clarify expectations under each of the six measures.
 - 1. Public education and outreach on stormwater impacts (lines 1179 - 1206).
 - The operator shall identify, schedule, implement, evaluate and modify, as necessary, best management practices (BMPs) to meet the following public education and outreach measurable goals:
 - Increased individual and household knowledge about the steps that they can take to reduce stormwater pollution;
 - Increased public employee, business, and general public knowledge of hazards associated with illegal discharges and improper disposal of waste;
 - Increased individual and group involvement in local water quality improvement initiatives;
 - Increased range of strategies to target audiences specific to the area serviced by the regulated small MS4;
 - Improved outreach program to address viewpoints and concerns of target audiences, particularly minority and disadvantaged audiences as well as special concerns relating to children; and
 - Targeted strategies towards local groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts.

- 2. Public involvement/participation (lines 1207 - 1222).
 - The operator shall identify, schedule, implement, evaluate and modify, as necessary, best management practices (BMPs) to meet the following public involvement/participation measurable goals:
 - Promote the availability of the operator's MS4 Program Plan for public review and comment;
 - Provide access to or copies of the annual report upon request of interested parties in compliance with all applicable freedom of information regulations; and
 - Participate, through promotion, sponsorship, or other involvement, in local activities aimed at increasing public participation to reduce stormwater pollutant loads and improve water quality.
- 3. Illicit discharge detection and elimination (lines 1223 - 1286).
 - The MS4 Program shall:
 - Develop, implement and enforce a program to detect and eliminate illicit discharges into the regulated small MS4;
 - Develop, if not already completed, and maintain, an updated a storm sewer system map, showing the location of all known outfalls of the regulated small MS4;
 - Effectively prohibit, through ordinance, or other regulatory mechanism, nonstormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions. The section also specifies those exempted discharges;
 - Develop and implement procedures to detect and address nonstormwater discharges, including illegal dumping, to the regulated small MS4;
 - Prevent or minimize to the maximum extent practicable, the discharge of hazardous substances or oil in the stormwater discharge(s) from the regulated small MS4;
 - Track the number of illicit discharges identified, provide narrative on how they were eliminated; and
 - Notify, in writing, any downstream regulated MS4 to which the small regulated MS4 is physically interconnected of the small regulated MS4's connection to that system.
- 4. Construction site stormwater runoff control (lines 1287 - 1342).
 - The operator shall develop, implement, and enforce procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities. The procedures must include the development and implementation of, at a minimum:
 - An ordinance or other mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance with the Erosion and Sediment Control Law and attendant regulations;
 - Requirements for construction site operators to implement an erosion and sediment control plant that is consistent with the Erosion and Sediment Control Law and attendant regulations;
 - Requirements for construction site operators to secure authorization to discharge stormwater from construction activities under a VSMP permit for construction activities;

- Procedures for receipt and consideration of information submitted by the public, and
 - Procedures for site inspection and enforcement of control measures.
 - The operator shall ensure that plan reviewers, inspectors, program administrators and construction site operators obtain the appropriate certifications as required under the Erosion and Sediment Control Law;
 - The operator shall track regulated land-disturbing activities and submit the total number of regulated land-disturbing activities and the total disturbed acreage.
- 5. Post-construction stormwater management in new development and redevelopment (lines 1343 - 1402).
 - The operator shall develop, implement, and enforce procedures to address stormwater runoff to the regulated small MS4 from new development and redevelopment projects in order to prevent or minimize water quality and quantity impacts.
 - The operator shall:
 - Develop and implement strategies which include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for the local community. The operator shall encourage the use of low impact development where determined appropriate by the operator;
 - Use an ordinance or other mechanism to address post-construction runoff from new development and redevelopment projects to ensure compliance with the Virginia Stormwater Management Act and attendant regulations, and to the extent allowable under state, tribal or local law. Such ordinances and other mechanisms shall be updated as necessary;
 - Require construction site operators to secure authorization to discharge stormwater from construction activities under a VSMP permit for new development and redevelopment projects;
 - Ensure adequate long-term operation and maintenance by the owner of structural stormwater management facilities through requiring the owner to develop a recorded inspection schedule and maintenance agreement;
 - Conduct site inspection and enforcement measures consistent with the Virginia Stormwater Management Act and attendant regulations;
 - Track number of acres per HUC developed utilizing low impact development principles; and
 - Track all known permanent stormwater management facilities that discharge to the regulated small MS4 and submit the following information:
 - Type of BMP structural stormwater management facility installed;
 - Geographic location (HUC);
 - Where applicable, the impaired surface water that the stormwater management facility is discharging into; and
 - Number of acres treated.
 - 6. Pollution prevention/good housekeeping for municipal operations (lines 1403 - 1432).
 - Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.

- The operator shall identify, implement, evaluate and modify, as necessary, best management practices (BMPs) to meet the following pollution prevention/good housekeeping for municipal operations measurable goals:
 - Operation and maintenance programs including activities, schedules, and inspection procedures shall include provisions and controls to reduce pollutant discharges into the regulated small MS4;
 - Illicit discharges shall be eliminated from storage yards, fleet or maintenance shops, outdoor storage areas, rest areas, waste transfer stations, and other municipal facilities;
 - Waste materials shall be disposed of properly;
 - Materials that are soluble or erodible shall be protected from exposure to precipitation;
 - Materials, including but not limited to fertilizers and pesticides, that have the potential to pollute receiving surface waters shall be applied according to manufacturer's recommendations; and
 - For state agencies with lands where nutrients are applied, nutrient management plans shall be developed and implemented in accordance with the requirements of §10.1-104.4 of the Code of Virginia.
- Under SECTION II E, Evaluation and assessment, it was established that the operator must evaluate its MS4 Program once during the permit cycle using EPA guidance procedures. Such information shall be utilized when reapplying for permit coverage. Results of this evaluation shall be kept on file and made available during audits and inspections (lines 1466 - 1478).
 - Specified that the operator must submit an annual report for the reporting period of July 1 through June 30 to the director by the following October 1. The reports shall additionally include (lines 1479 - 1510):
 - Copies of any annual updates to the MS4 Program Plan and annual estimates of the quantity of pollutant identified in a WLA discharged by the MS4;
 - The number of illicit discharges identified and a narrative on how they were eliminated;
 - The total number of regulated land disturbing activities and the total disturbed acreage;
 - Information on new stormwater management facilities that have been brought on line; and
 - A list of any new or terminated signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures.
- Under SECTION III, basic EPA boiler plate language that applies to all VSMP permits was refined (lines 1522 – 1894). Changes in this section were not substantive.
- Under FORMS, the incorporated General Permit Registration Statement form was updated to track the amended regulation (lines 1896- 1907).

Draft Motion for the Board's consideration:

VIRGINIA SOIL AND WATER CONSERVATION BOARD

September 20, 2007 Meeting
at the Virginia State Library
Richmond, Virginia

Motion to approve, authorize and direct the filing of proposed regulations related to Part XV of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations and other related sections:

The Board approves these proposed regulations and incorporated forms and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the proposed amendments to Part XV of the Board's Virginia Stormwater Management Program Permit Regulations [entitled **"General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems"**] and other approved sections, including but not limited to, Part I definitions, and the VSMP General Permit Registration Statement form which is incorporated by reference, and any other required documents to the Virginia Regulatory TownHall, the Virginia Registrar's Office, and the U.S. Environmental Protection Agency.

In accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A9, the Board further authorizes at least one public hearing to be held by the Department not less than 45 days after publication of the proposed regulations in the Virginia Register of Regulations and that the Department make provisions to receive public comment concerning the proposed regulations. Upon closing of the public comment period, the Department is authorized to make revisions to the proposed regulations in response to comments received and to hold additional stakeholder meetings as it deems necessary.

In implementing this authorization, the Department shall follow and conduct actions in accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A9, the Virginia Register Act, and other technical rulemaking protocols that may be applicable. The Department shall also implement all necessary public notification and review procedures specified by Federal Regulation regarding General Permit reissuance.

This authorization extends to, but is not limited to, the posting of the approved action to the Virginia Regulatory TownHall and the filing of the proposed regulations and incorporated forms with the Virginia Registrar's Office and the U.S. Environmental Protection Agency, the holding of at least one public hearing, as well as the coordination necessary to gain approvals from the Office of the Attorney General, the Virginia Registrar of Regulations, and the U.S. Environmental Protection Agency.

The Board requests that the Director or the Regulatory Coordinator report to the Board on these actions at subsequent Board meetings.

Motion made by: _____

Motion seconded by: _____

Action: _____

Linda S. Campbell
Chairman

Joseph H. Maroon
Secretary